

48A C.J.S. Judges § 287

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

a. Interest

(3) Particular Interests

§ 287. Compensation, costs, fees, and fines

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  42

Ordinarily, and in the absence of necessity, a judge cannot act in a matter directly affecting the judge's right to compensation or the amount thereof; however, an interest in the costs of the case, or the fact that fines imposed by the judge go into a fund from which the judge's salary is paid, will not usually disqualify the judge.

In the absence of necessity, a judge is disqualified to act in litigation wherein the judge's salary or compensation is involved.¹ A judge cannot act in a case in which the judge has a pecuniary interest in convicting a defendant in the form of compensation which the judge would not receive if defendant were acquitted.² However, the mere fact that a judge is paid a specified fee for each case tried before the judge does not disqualify the judge from sitting, on the ground of interest,

where such fee is not contingent on the result of the trial.³ There is some authority to the effect that the fees given by law for the performance of official duties in relation to civil and criminal proceedings do not constitute an interest in the proceeding which disqualifies a judge⁴ although the judge's sole compensation in certain cases is a fee to be paid by defendant in case of conviction.⁵

Under the rule that the disqualification of a judge must yield to the demands of necessity,⁶ a judge may hear and determine causes involving compensation where every judge is affected by the question involved so that disqualification on the ground of interest would thus entirely prevent the hearing of the case.⁷ A judge is not disqualified from sitting in a litigation merely because some question pertaining to the judge's salary is involved in a remote, speculative, or trivial way.⁸

Costs.

Ordinarily, where a judge is not a party, an interest in the costs of the case is not sufficient to disqualify the judge⁹ since such interest is not an interest in the subject matter of the case.¹⁰ Where a judge is made a party as such to a suit, the judge is disqualified although the interest extends only to the costs of making the judge a party.¹¹ A judge is not disqualified by the fact that costs are payable to the municipality from which the judge receives compensation where the compensation is a fixed salary and the judge receives no part of the assessed costs.¹²

Fines.

A judicial officer is not disqualified to try offenders by the fact that the fines imposed go into a fund from which the officer's salary is paid.¹³ On the other hand, it has been held that where, on conviction before a local court, part of the fine imposed is payable to the municipality, a mayor who is chief executive officer and responsible for the financial condition of the municipality is disqualified to sit as judge.¹⁴

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 Ark.—*Ferrell v. Keel*, 103 Ark. 96, 146 S.W. 494 (1912).

Ga.—*McKnight v. City of Decatur*, 200 Ga. 611, 37 S.E.2d 915 (1946).

A.L.R. Library
Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants, 72 A.L.R.3d 375.

- 2 U.S.—*Tumey v. State of Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio L. Abs. 159, 5 Ohio L. Abs. 185, 50 A.L.R. 1243 (1927).
- W. Va.—*Keith v. Gerber*, 156 W. Va. 787, 197 S.E.2d 310 (1973).
- Number of convictions**
- If a trial judge is dependent for his or her income on the number of convictions obtained in court, rather than the number of cases disposed of or some other neutral criterion, this is a situation in which a judge's impartiality might reasonably be questioned or in which it could be shown that the judge has a personal bias concerning the subject matter, such that the judge should be recused.
- Tex.—*Sanchez v. State*, 926 S.W.2d 391 (Tex. App. El Paso 1996), petition for discretionary review refused, (Aug. 13, 1997).
- 3 S.C.—*First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994).
- 4 Ga.—*Crosby v. State*, 49 Ga. App. 210, 174 S.E. 721 (1934).
- 5 Tex.—*Bennett v. State*, 4 Tex. App. 72, 1878 WL 8930 (Ct. App. 1878).
- 6 § 235.
- 7 Haw.—*Schwab v. Ariyoshi*, 57 Haw. 348, 555 P.2d 1329 (1976).
- Minn.—*State ex rel. Gardner v. Holm*, 241 Minn. 125, 62 N.W.2d 52 (1954).
- 8 Fla.—*Peters v. Meeks*, 171 So. 2d 562 (Fla. 2d DCA 1964).
- Ohio—*In re Crews' Estate*, 108 Ohio App. 312, 9 Ohio Op. 2d 284, 161 N.E.2d 525 (2d Dist. Montgomery County 1958).
- Tex.—*Richardson v. State*, 109 Tex. Crim. 148, 4 S.W.2d 79 (1928).
- 9 Ga.—*Dennard v. State*, 46 Ga. App. 513, 168 S.E. 311 (1933).
- 10 Ga.—*Wellmaker v. Terrell*, 3 Ga. App. 791, 60 S.E. 464 (1908).
- 11 Tex.—*Collingsworth County v. Myers*, 35 S.W. 414 (Tex. Civ. App. 1896).
- 12 Ohio—*Dugan v. State*, 117 Ohio St. 503, 6 Ohio L. Abs. 42, 159 N.E. 477 (1927), *aff'd*, 277 U.S. 61, 48 S. Ct. 439, 72 L. Ed. 784 (1928).
- 13 Cal.—*Ex parte Guerrero*, 69 Cal. 88, 10 P. 261 (1886).
- 14 U.S.—*Tumey v. State of Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio L. Abs. 159, 5 Ohio L. Abs. 185, 50 A.L.R. 1243 (1927).